

LEGISLATIVE BULLETIN

The Most Wonderful Time of the Year

Yes, it's town meeting season! We're sure no one reading this needs to be reminded that next Tuesday, March 8, is town meeting day. In recognition of the event, and to accommodate its many members who serve as local officials, the House of Representatives has only a few committee meetings on Tuesday. The Senate, however, does have a full committee schedule that day.

A majority of New Hampshire towns will hold the first session of their town meeting on Tuesday and the second session later in the week or the following week. The approximately one-third of towns that have adopted the official ballot referendum (SB 2) form will hold their *second* session on Tuesday. And a few towns will hold their *single*-session meeting on Tuesday. Whatever format your town follows, we wish you a successful and productive meeting.

Nor have we forgotten those towns that have their meetings in April or May—so let us take this opportunity for an early expression of best wishes for your meetings as well!

Reminder: House Bill 1033

Reminder: *Please contact your representatives as soon as possible* and ask them to **kill HB 1033**—the bill that would prohibit municipalities from using any “funds collected from property taxes” to lobby the state legislature. We anticipate that this bad bill will be headed for a vote in the House later in March. We are asking legislators to vote *against* the committee recommendation and *for* an Inexpedient to Legislate motion or any other motion that would kill the bill.

We explained in [Bulletin #10](#) and in a [recent communication to our membership](#) how **HB 1033** hurts local government, and we think that this is a great opportunity for our members to explain to legislators why the lobbying efforts of NHMA and similar organizations are so important. Membership organizations for local governments provide education and support for local officials, while helping them to advocate, engage, and

NHMA Legislative Bulletin 11
March 4, 2022

Inside this issue:

Health Officers	2
Default Budgets	3
Attorney Client Privilege	4
RTK Ombudsman	5
Policy Process	5
House/Senate Calendars	6
NHMA Events	6

GOVERNMENT AFFAIRS CONTACT INFORMATION

Margaret M.L. Byrnes
Executive Director

Natch Greyes
Government Affairs Counsel

Katherine Heck
Government Finance Advisor

Timothy W. Fortier
Communications Coordinator

Pam Valley
Administrative Assistant



25 Triangle Park Drive
Concord NH 03301
Tel: 603.224.7447
EM: governmentaffairs@nhmunicipal.org
Website: www.nhmunicipal.org

work with the legislature and other policymakers in an efficient and beneficial way. When the pandemic shut down the world [in 2020](#), it was advocacy efforts at the state legislature that crafted a workable solution to delayed town meetings; brought \$32 million in federal CARES Act funds to cities; and *still* helped secure \$50 million in state funding for cities and towns to deal with PFAS in drinking water. The very [next year](#), advocacy efforts at the state legislature resulted in 30 percent of meals and rooms tax revenue being distributed to towns and cities, with a total estimated value of \$196 million dollars. This year, municipal advocacy helped the House [reverse a committee recommendation](#) to kill a bill that would provide a 7.5 percent state contribution to the employer’s share of the New Hampshire Retirement System obligation, saving \$27.7 million in fiscal year 2023 and \$28.4 million in fiscal year 2024. And those are just *some* of the *recent* examples of how advocacy improves local operations, and of the kind of results that would be much less likely if **HB 1033** passes.

We are hopeful that the House will again reverse the committee recommendation and support municipalities by killing **HB 1033**. ***Please contact your representatives as soon as possible*** and ask them to vote *against* the committee recommendation and *for* an Inexpedient to Legislate motion or any other motion that would kill this bill.

Health Officers & City Council Powers

This week the **Municipal & County Government Committee** recommended that the House pass two bills – **HB 1268** and **HB 1272** – related to health officers. For those of you who are WMUR viewers, you may have seen [the clip](#) that aired on Monday on these bills. Or you may have read the companion Union Leader [article](#) in Tuesday morning’s edition. Unfortunately, that clip and article are a bit inaccurate now because of events that happened later Tuesday.

Later Tuesday morning, the committee reconsidered both bills for the purpose addressing the proposed amendments that were not considered during Monday’s executive session. In both cases, the committee adopted the amendments. Both amendments substantially rewrite their respective bills. While we still oppose the bills, the amendments deal with the serious issue of ordinances only being valid for 10 days and the language about “clear and present danger.”

HB 1268 as amended replaces the phrase “which may seem for the well-being of the city” in the city council powers statute, [RSA 47:17](#), with the phrase “for the abatement of nuisances that interfere with the use or enjoyment of property.” It is unclear how this language would interact with the language under section XIV of the same statute stating that the city council has the power to issue regulations related to nuisances. We think that this new language may be interpreted to contradict or otherwise limit that prior language and is therefore unnecessary, in addition to limiting the power of cities.

HB 1272 as amended replaces the phrase “and such other regulations relating to the public health as in their judgment the health and safety of the people require” in the health officer’s statute, [RSA 147:1](#), with a definitive list of powers – “such as garbage, insects, unsanitary conditions, septic, rodents, and safe drinking water inspections.” We remain concerned that the definitive listing may leave out some regulation relating to the public health which is currently unknown to the legislature or those who testified.

Both bills now head to the full House for consideration, presumably on or before March 17, which is the deadline for the House to act on bills that are not in a second committee. Local officials should contact their representatives and urge them to vote ***against*** the committee’s recommendation of Ought to Pass and support a subsequent motion of Inexpedient to Legislate.

Default Budgets Revisited and Revised

On Wednesday, February 23, the **House Municipal and County Government Committee** recommended **HB 1070** Ought to Pass on a party line vote. **HB 1070** would change the calculation of the default budget in an official ballot referendum (SB 2) town by requiring that any reduction to an appropriation made by the governing body in the proposed budget be subtracted from the default budget. This undermines the whole purpose of a default budget.

The point of a “default” budget is exactly that—if the voters do not approve the governing body/budget committee’s proposed budget for the coming year, the town will “default” to last year’s budget. The default budget is not a vehicle for policy changes for the coming year—it is last year’s budget, adjusted only to eliminate non-recurring expenditures and to include items required by law or contract.

HB 1070 introduces the strange notion that when the select board or the budget committee proposes changes for the coming year’s budget, those changes should be artificially grafted onto last year’s budget. This contradicts the fundamental proposition that the default budget is essentially a re-adoption of the previous year’s budget, and it eliminates the voters’ ability to choose between two budgets. Again, the point of the default budget is that if voters don’t like the proposed budget for the coming year, they can choose to keep last year’s budget. **HB 1070** turns that choice into a Hobson’s choice—the voters can either approve the select board/budget committee’s budget with the proposed reductions or reject that budget and choose the default budget—which will have exactly the same reductions! If the voters do not support the proposed reductions, they are simply out of luck. The bill is also internally inconsistent, requiring only that proposed reductions be incorporated into the default budget, while proposed increases would not be. Thus, the voters would still have a choice when it comes to increasing appropriations.

By taking this approach, **HB 1070** would require that the default calculation cross over two separate and distinct budget years. It would also make the default budget a moving target. As the proposed budget is developed, endless iterations of the default budget may need to be calculated. The resulting line-item allocations shown on the default budget, which is supposed to reflect what the voters approved last year, could potentially be dramatically different from what was actually approved by the voters. Further, despite the new language being proposed, the default budget may still be higher than the proposed operating budget based on voter approved contractual obligations.

A simple example helps illustrate one of the serious problems with this bill:

Assume that at the public hearing on the budget, the governing body proposes an operating budget with a \$5,000 reduction in the public works department’s vehicle repair and maintenance line due to the inclusion of a separate warrant article for the purchase of a new snowplow. In preparation for this meeting, the default budget would be prepared in accordance with RSA 40:13 XI (a), and under **HB 1070** would include the \$5,000 reduction.

If, at that hearing, there is a proposal to further reduce the public works department’s line by \$10,000 (for a total reduction of \$15,000) and that is adopted by the governing body, the default budget would need to be recalculated. That recalculation would show a default budget appropriation for the public works department of \$15,000 less than the prior year.

At the deliberative session, the voters have the opportunity to debate and amend the operating budget, but under RSA 40:13, XI(b), they are prohibited from amending the default budget (although

they may debate it). If the voters at the deliberative session decide that the new snowplow is unnecessary and reduce the separate warrant article to \$0, it is not clear that the language proposed by **HB 1070** would allow them to restore \$15,000 to the public works department's line in the default budget, as that would contravene both the proposed reductions and the existing language of RSA 40:13, XI(b). Thus, the town could end up in the situation of having no new snowplow, but also less money to maintain the old one.

HB 1070 will presumably be taken up on or before March 17, which is the deadline for the House to act on bills that are not in a second committee. Local officials should contact their representatives and urge them to vote against the committee's recommendation of Ought to Pass and vote for a motion of Inexpedient to Legislate.

Attorney-Client Privilege at Risk

As we wrote in [Bulletin #3](#), **HB 1073**, as introduced, would repeal the exemption added into the Right-to-Know Law last year protecting attorney-client privileged and attorney-work product information from public disclosure.

Despite strong opposition from the New Hampshire Attorney General's Office, the New Hampshire Bar Association, municipal attorneys, municipal officials, the Association of Counties, NHMA, the School Boards Association, and the Commissioner of the Department of Agriculture, the House Judiciary Committee recommended **HB 1073** as Ought to Pass with an Amendment.

The amendment, instead of entirely repealing the exemption, would make records protected by attorney-client privilege or the work product doctrine subject to disclosure "consistent with the public's right to know."

Aside from undermining the attorney-client privilege, the bill is now ambiguous. What "consistent with the public's right to know" actually means is unclear, setting this statute up for further interpretation by the supreme court, if this bill passes. That's the exact opposite result that legislation – particularly legislation that was enacted to protect a specific privilege – is supposed to achieve. This terminology is not defined anywhere in RSA chapter 91-A and, if passed, **HB 1073** is certain to lead to litigation so that a court can determine what the legislature meant by it.

Assuming the bill's supporters intend that *some* of these records should be publicly disclosed, passage of this bill threatens the relationship between government clients and their attorneys. Attorney-client privilege is fundamental to the attorney-client relationship. The protection it affords applies to every client, whether an individual, a corporation, or a governmental entity. The purpose of the privilege is to allow clients to be forthcoming with their attorneys *and* for attorneys to be able to provide honest and comprehensive legal advice in the manner best understood by their client. The exemption enacted last year enshrines that privilege into statute, ensuring that municipalities – and other public entities – can rely on having the same relationship with their attorney as any other organization. It prevents the creation of two separate "classes" of clients—one that gets the benefit of the law of attorney-client privilege, and one that does not.

Local officials should contact their representatives and urge them to vote *against* the committee's recommendation of Ought to Pass and to support a subsequent motion of Inexpedient to Legislate. This bill will also presumably be taken up by the House on or before March 17, which is the deadline for the House to act on bills that are not in a second committee.

RTK Ombudsman: Fifth Time's the Charm?

The Senate Judiciary Committee will hear testimony next week on **HB 481**, which would establish the office of the Right-to-Know Law Ombudsman. The ombudsman would oversee a process to resolve Right-to-Know Law complaints in a less formal manner than a superior court trial.

This proposal has been kicking around the legislature for several years. In 2018 the House and Senate passed different bills, and then each killed the other's bill. In 2019 the Senate passed a bill but then tabled it, and it died on the table. In 2020 the Senate passed another bill, then referred it to the Finance Committee for further study. The Finance Committee recommended it for interim study, but it never made it back to the full Senate, because it died when the legislature shut down due to COVID-19. In 2021 the House passed the current bill, then referred it to the House Finance Committee, which retained it. The Finance Committee recommended the bill last fall, and the full House passed it (again) in January. Now it moves to the Senate.

Under the bill, anyone who believes there has been a Right-to-Know Law violation could file a complaint with the ombudsman, rather than with the superior court, and the public body or agency would have 20 days to file a response. The ombudsman would then hold a hearing and issue a ruling within 30 days.

The ombudsman's decision could be appealed to the superior court, and the court's review would be *de novo*. It is hoped, however, that there would be few appeals, with the result that both sides spend less time and less money on litigation. The ombudsman must be a member of the New Hampshire bar with a minimum of five years of full-time experience and be knowledgeable about the Right-to-Know Law.

We have expressed cautious support for the bill, because a faster and less expensive process for resolving Right-to-Know Law complaints is in everyone's interest. However, the usefulness of this process will depend heavily on the competence and credibility of the ombudsman. The right to appeal to the superior court acts as a safeguard, as does the bill's three-year sunset date. The law would automatically expire in 2025; if it turns out to be a disaster, it could go away, but if it works well, presumably the legislature would re-enact it.

The hearing is scheduled for **Tuesday, March 8, at 1:15 p.m., in State House Room 100**. If you are interested in the bill, please attend the hearing or contact your senator and members of the [Senate Judiciary Committee](#).

Get Involved in NHMA's Legislative Policy Process

NHMA's biennial legislative policy process is getting underway. As a first step, we are recruiting volunteers to serve on our three legislative policy committees. These committees will review legislative policy proposals submitted by local officials and make recommendations on those policies, which will go to the NHMA Legislative Policy Conference in September.

If you are a municipal official in an NHMA member municipality and are interested in serving on one of the policy committees, please contact the Government Affairs staff at 603-224-7447 or governmentaffairs@nhmunicipal.org.

Each of the committees deals with a different set of municipal issues. The committees and their subject areas are as follows:

- **Finance and Revenue** – budgeting, revenue, tax exemptions, current use, assessing, tax collection, retirement issues, education funding.

- General Administration and Governance – elections, Right-to-Know Law, labor, town meeting, charters, welfare, public safety.
- Infrastructure, Development, and Land Use – solid/hazardous waste, transportation, land use, technology, environmental regulation, housing, utilities, code enforcement, economic development.

When you contact us, please indicate your first and second choices for a committee assignment. We will do our best to accommodate everyone’s first choice, but we do need to achieve approximately equal membership among the committees. We hope to have 15-20 members on each committee.

There will be an organizational meeting for all committees on **Friday, April 1**. After that, each committee will meet separately as many times as necessary to review the policy proposals assigned to it—typically three to five meetings, all held on either a Monday or Friday, between early April and the end of May.

HOUSE CALENDAR

There are no hearings in the House on bills of municipal interest.

SENATE CALENDAR

MONDAY, MARCH 7, 2022

ELECTION LAW AND MUNICIPAL AFFAIRS, Room 100, SH

- 1:00 p.m. **HB 87**, relative to the definition of electioneering.
 1:15 p.m. **HB 144**, relative to absentee ballot request forms.

TUESDAY, MARCH 8, 2022

COMMERCE, Room 100, SH

- 9:15 a.m. **HB 589-FN**, requiring workers’ compensation to cover prophylactic treatment for critical exposure.

JUDICIARY, Room 100, SH

- 1:00 p.m. **HB 597-FN**, relative to the expectation of privacy.
 1:15 p.m. **HB 481-FN-A**, establishing the office of the right-to-know ombudsman and making an appropriation therefor.
 2:00 p.m. **HB 579**, requiring notice to the public before immigration checkpoints are conducted.

WEDNESDAY, MARCH 9, 2022

WAYS AND MEANS, Room 100, SH

- 9:10 a.m. **HB 355**, relative to Keno.
 9:20 a.m. **HB 364**, revising the definition of charitable organizations relative to games of chance.

2022 NHMA UPCOMING MEMBER EVENTS
Please visit www.nhmunicipal.org for the most up-to-date information regarding our upcoming virtual events. Click on the Events and Training tab to view the calendar.